

**STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
PETER GOLDMARK, Commissioner of Public Lands**

ROAD USE PERMIT

Permit No. 50-092614

THIS PERMIT, made and entered into this 28th day of July, 2016, by and between the STATE OF WASHINGTON, acting by and through the Department of Natural Resources (DNR), herein called the "State" and LUMMI INDIAN BUSINESS COUNCIL, a Washington Corporation, herein called the "Grantee."

Permission. State, for and in consideration of the terms and conditions specified herein, hereby grants to the Grantee, a nonexclusive permit ("Permit") to use a road over and across a strip of land, hereinafter defined as the "Premises," located in Whatcom County, Washington:

Existing Road on State Land: That existing road in Gov't Lot 2 of Section 13 and Gov't Lot 2, SE1/4 NE1/4 of Section 14 all located in Township 38 North, Range 5 East, W.M. (hereafter "Existing Road on State").

The Premises is located approximately as shown on Exhibit A. The Existing Road on State shall be confined to 20 feet in width, 10 feet each side of the existing centerline. The word "Road" shall mean roads now existing on the Premises, or any segment of such road.

Purpose. Grantee shall be limited to the use of this Permit to access the South bank gravel bar of the Middle Fork Nooksack River. Also, Grantee may store materials and equipment being used for the Porter Creek Reach Restoration Project Phase 1 (hereafter "Project") approximately Southeast of the Premises and Southwest of the Fish Staging Area, as shown on Exhibit A. Project is described as follows:

The Nooksack Salmon Enhancement Association (NSEA) and Lummi Natural Resources Department (LNRD) have identified the Lower Middle Fork Nooksack River (Middle Fork) near Porter Creek as a candidate location for habitat restoration. The proposed restoration reach is between River Mile (RM) 4.9 (upstream end) and RM 4.6 (downstream end). This reach was targeted by NSEA for restoration following the recommendations put forth in the WRIA I Recovery Plan (WRIA 1 2005) for the entire Middle Fork, and the geomorphic and hydraulic assessment conducted by Natural Systems Design (NSD, 2013).

Grantee is permitted access for hauling timber to the Project site, as well as for administrative access associated with the Project.

The Permit is subject to the terms and conditions hereinafter set out.

Consideration. The consideration paid by the Grantee to State is as follows: NINE HUNDRED SEVENTEEN and 00/100 Dollars (\$917.00), which includes a Five Hundred and 00/100 Dollars (\$500.00) road use cost and a Four Hundred Seventeen and 00/100 Dollars (\$417.00) timber appraisal cost.

Termination. This permit shall terminate September 30, 2018, or earlier when requested by the Grantee; provided, however, that this permit may be suspended or terminated upon the breach of any of the conditions herein.

Reservations. State reserves all rights incident to fee ownership of the Premises and the profits thereon (including timber) and the right of use for any purpose including but not limited to the right to remove profits within the Premises; the right at all times to cross and re-cross the Premises at any place on grade or otherwise; and the right to use, maintain, patrol, reconstruct or repair the Premises. State may grant to third parties any and all rights reserved.

Export Restrictions. Any export-restricted timber originating from state land under this Permit shall not be exported until processed. Grantee shall comply with all applicable requirements of WAC 240-15-015 (relating to the prohibitions on export and substitution), WAC 240-15-025 (relating to reporting requirements), and WAC 240-15-030 (relating to enforcement). All export restricted timber from state lands shall be painted and branded in compliance with WAC 240-15-030(2). If Grantee knowingly violates any of the prohibitions in WAC 240-15-015, Grantee shall be barred from bidding on or purchasing export restricted timber as provided. Grantee shall comply with the Export Administration Act of 1979 (50 U.S.C. App. Subsection 2406(i)) which prohibits the export of unprocessed western cedar logs harvested from state lands.

Compliance with Laws. For all activities conducted pursuant to this Permit, each party shall, at its own expense, comply with all applicable laws in effect now and as hereafter modified.

Permittees. The Grantee may permit its respective employees, agents, contractors, licensees, lessees, purchasers of timber or other profits and their agents, herein individually referred to as "Permittee" and collectively referred to as "Permittees", to exercise the rights granted to the Grantee herein subject to the insurance, hold harmless and indemnification requirements specified below.

Acts or omissions of the Permittees operating under this Permit shall be deemed an act of the Grantee. Restrictions or requirements placed on the Grantee herein shall apply equally to the Permittees.

Maintenance. Maintenance is defined as work normally necessary to preserve and keep the roads in their present condition or as hereafter improved. At a minimum, the roads will be maintained to meet applicable forest practice standards set forth in Chapter 222-24 WAC as now written or hereafter amended.

When a road is being used solely by one party, that party shall be solely responsible for maintaining that portion of the road so used to the standards existing at the time sole use is commenced.

During periods when either party and/or other parties with an easement or license jointly use the road(s), or any portion thereof, the cost of maintenance and resurfacing shall be allocated among such users on the basis of their respective use including that of their Permittees. During periods of joint maintenance, the users shall meet at times to be set by mutual agreement and establish necessary maintenance provisions. Such provisions shall include, but not be limited to the following:

The appointment of a maintainer, which may be one of the parties or any third party, to perform or contract the maintenance; the extent of resurfacing necessary to keep the road safe and to reduce environmental impacts; and a method of payment by which each party using the road or a portion thereof shall pay its pro rata share of the cost of maintenance and resurfacing.

Repairs. Grantee shall repair, or cause to be repaired at its sole cost, that damage to the Road arising out of its use which is in excess of that which it would cause through normal and prudent usage. Damage caused by an unauthorized user shall be repaired at the expense of the Grantee if the Grantee is the sole user of the road, State if State is the sole user of the road and shared jointly if there is joint use of the road.

Improvements. Unless the parties agree in writing to share the cost of improvements in advance of such improvements being made, such improvements shall be solely for the account of the improver.

Gate Installation. Grantee shall install a gate at approximately 100 feet from the beginning of Premises, as shown on Exhibit A, in accordance with the Steel Gate Design Specifications attached as Exhibit D. Grantee shall provide State access through gate at all reasonable times and provide room for a DNR lock within the lockbox.

Compliance with the State's HCP. The Premises are located within the State's Habitat Conservation Plan area in connection with Incidental Take Permit No. PRT-812521, as supplemented by Permit No. 1168 (collectively ITP). Grantee and all Permittees must comply with the terms and conditions set forth in Exhibit B while operating on the Premises.

Prior Rights. This Permit is subject to any rights and valid claims previously conveyed by State, and to any rights and valid claims pending on said Premises. Grantee rights herein are subject to all matters of public record and to all prior unrecorded or recorded easements, permits, leases and options affecting said lands or Grantee rights across, over or upon such lands. Grantee rights herein are also subject to the rights of State to use its own lands for any and all legal purposes including the use of the land by third parties with the permission of State.

Operational Restrictions. Site-specific operational requirements are listed in Exhibit C. Non-compliance with these requirements shall constitute a breach of contract and may result in State suspending operations until the breach is remedied.

Forest Practices Application. Grantee shall require its contractor responsible for road construction, road maintenance, timber harvesting, road abandonment and any other activity allowed by this Permit and regulated by the Washington State Department of Natural Resources Forest Practices Division (DNR-Regulatory) to sign a Change of Operator form as the operator prior to starting any regulated activities.

Permits. Prior to starting work on the Premises, Grantee shall provide State copies of all permits acquired for the project.

Plan of Operation. In the event that Grantee intends to construct or reconstruct roads within the premises, Grantee shall obtain State's written approval of the road construction plans prior to commencing construction work.

Damage. Grantee shall take all reasonable precautions to protect State-owned timber, crops and improvements. The Grantee must notify State two (2) weeks in advance of completion of said operations for the purpose of inspection for compliance with the terms hereof.

Grantee shall pay State for any damage to timber, crops and improvements not identified and paid for under the terms and conditions of this Permit. State shall appraise the damage at market value at the time of damage and bill Grantee for said damages at said value.

Waste. Grantee shall not cause or permit any filling activity to occur in or on the Easement Area, except as approved by State. Grantee shall not deposit refuse, garbage, or other waste matter or use, store, generate, process, transport, handle, release, or dispose of any hazardous substance, or other pollutants in or on the Easement Area except in accordance with all applicable laws.

The term hazardous substance means any substance or material as those terms are now or are hereafter defined or regulated under any federal, state, or local law including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA 42 USC 9601 *et seq.*) as administered by the US Environmental Protection Agency, or the

Washington Model Toxic Control Act (MTCA RCW 70.105D) as administered by the State Dept. of Ecology.

Grantee shall immediately assume responsibility for a hazardous substance release (spill) caused by Grantee or its Permittees on or adjoining the Permit Area.

As responsible party, Grantee shall:

- Immediately notify all necessary emergency response agencies, as required under federal, state and local laws, regulations, or policies.
- Following emergency response agency notifications, notify State (Dept. of Natural Resources) of all spill releases and Grantee actions completed for spill reporting and actions planned or completed toward spill cleanup. State notification requirements are "same business day" notification for normal state work days and "next available business day" notification for weekends and holidays.
- At Grantees sole expense, conduct all actions necessary to mitigate the spill release. Mitigation response actions may include, but are not necessarily limited to, initial release containment, follow-up site cleanup and monitoring actions, and continued contact and coordination with regulators and State, as defined under the aforementioned laws, regulations, policies and this agreement.
- Other than performing initial emergency response cleanup/containment actions; obtain approvals in advance of all site cleanup actions (e.g. site characterization investigations, feasibility studies, site cleanup and confirmation sampling, and groundwater monitoring) conducted on State lands, in coordination with regulatory agencies and State.
- Obtain and understand all necessary hazardous substance spill release notification and response mitigation requirements, in advance of conducting Grantee operations on State land.

Survey Markers. Grantee shall not destroy any land survey monuments marking local control points, geodetic control points, and land boundary survey corners without prior written approval from the landowner, which shall not be unreasonably withheld. Land survey monuments that must necessarily be disturbed or destroyed during construction or maintenance activities must be adequately referenced and replaced, at the Grantee's expense, under the direction of a Professional Land Surveyor, licensed in the State of Washington, in accordance with all applicable laws of the State of Washington in force at the time of construction, including but not limited to RCW 58.24, and all Department of Natural Resources regulations pertaining to preservation of such monuments. As directed under Chapter 332-120 WAC, a Land Surveyor or

Engineer must submit an application with the Department of Natural Resources for permission to temporarily remove or destroy a survey monument.

Fire Prevention and Control. The Grantee shall be responsible for satisfying the requirements of the laws of the State of Washington pertaining to Forest Protection and, in addition thereto, the Grantee shall during the closed season of April 15 through October 15 contact State who shall determine any extra requirements pertaining to burning procedure, blasting, watchman, extra patrol, pumpers, tankers, fire hoses, fire tools, etc., which are deemed necessary for prevention and suppression of fire which may result from the Grantee's operations.

Insurance. Before using any of said rights granted herein and at its own expense, Grantee shall obtain and keep in force during the term of this Permit and require its Permittees to obtain while operating on the Permit Area the following liability insurance policies, insuring Grantee against liability arising out of its operations, including use of vehicles. The limits of insurance shall not be less than as follows:

- (a) Commercial General Liability (CGL) insurance with a limit of not less than \$1,000,000 per each occurrence or Personal Liability insurance, as applicable, under a personal liability policy, commercial liability insurance policy, or package property and liability insurance policy. If such CGL insurance contains aggregate limits, the general aggregate limits shall be at least twice the "each occurrence" limit, and the products-completed operations aggregate limit shall be at least twice the "each occurrence" limit.
- (b) Employer's liability ("Stop Gap") insurance, and if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.
- (c) Business Auto Policy (BAP) insurance, and if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 per accident, with such insurance covering liability arising out of "Any Auto".
- (d) Grantee and its workers are covered by Grantee's Workers Compensation Program and will continue to be so covered during the entire term of this Permit. All contractors, subcontractors, or other Permittees of Grantee must comply with all State of Washington workers' compensation statutes and regulations.

Grantee shall comply with all State of Washington workers' compensation statutes and regulations or Grantee's own workers' compensation statutes and regulations whichever is applicable. Except as prohibited by law, Grantee waives all rights of subrogation against State for recovery of damages to the extent they are covered by workers compensation, employers' liability, commercial general liability or commercial umbrella liability insurance. All Permittees must comply with all State of Washington workers' compensation statutes and regulations.

All insurance should be purchased on an occurrence basis and should be issued by companies admitted to do business within the State of Washington and have a rating of A- or better in the most recently published edition of Best's Reports. Any exception to the State's requirements shall be reviewed and approved in advance by the Risk Manager for the Department of Natural Resources. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

The State of Washington, Department of Natural Resources, its elected and appointed officials, agents and employees shall be named as an additional insured by the Grantee and its Permittees on all general liability, excess, and umbrella insurance policies.

Before using any said rights granted herein, Grantee shall furnish State with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements specified above. Certificate(s) must reference the State's Permit number.

State shall be provided written notice before cancellation or non-renewal of any insurance referred to herein, as prescribed in statute (Chapter 48.18 RCW or Chapter 48.15 RCW).

Grantee shall include all Permittees as insureds under all required insurance policies or require separate certificates of insurance and endorsements for each. All Permittees of Grantee must comply with all insurance requirements stated herein. Failure of Permittees to comply with State's insurance requirements does not limit Grantee's liability or responsibility.

Grantee shall furnish State with certificates of insurance and endorsements for all Permittees prior to Permittees operating on the Permit Area.

All insurance provided by the Grantee in compliance with this Permit shall be primary as to any other insurance or self-insurance programs afforded to or maintained by State. Grantee waives all rights against State for recovery of damages to the extent these damages are covered by general liability or umbrella insurance maintained pursuant to this Permit.

By requiring insurance herein, State does not represent that coverage and limits will be adequate to protect Grantee, and such coverage and limits shall not limit Grantee(s) liability under the indemnities and reimbursements granted to State in this Permit.

If Grantee is self-insured, evidence of its status as a self-insured entity shall be provided to State. If requested by State, Grantee must describe its financial condition and the self-insured funding mechanism.

Indemnity by the Grantee. Grantee shall defend (with counsel acceptable to State's Attorney General, whose approval shall not be unreasonably withheld), indemnify, and hold harmless State, agencies of State and all officials, agents and employees of State from all claims that arise out of the negligence of the Grantee or its Permittees in their use of the Permit. A "claim" as used in this section means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorneys' fees, attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the resulting loss of use. Notwithstanding the foregoing, Grantee's obligation to defend, indemnify, and hold harmless State from any judgment, decree or arbitration award shall extend only to the percentage of negligence of Grantee and its Permittee(s) in contribution to such claim. Grantee waives its immunity under Title 51 RCW only to the extent it is required to indemnify, defend, and hold harmless State, agencies of State and all officials, agents and employees of State. This indemnification shall survive the expiration or termination of the Permit.

Indemnity by the Permittees. Grantee shall include a hold harmless and indemnification clause in any contract or third party authorization substantially in the form described below, whenever Grantee allows its Permittees to exercise Grantee's rights to perform higher risk activities such as equipment operation, tree felling, and construction.

A. Contractor to indemnify State: Contractor shall defend (with counsel acceptable to State's Attorney General, whose approval shall not be unreasonably withheld), indemnify, and hold State of Washington, acting by and through the Department of Natural Resources (DNR), its officials, agents and employees (indemnified parties) harmless from and against all claims, demands, losses, damages, or costs, including but not limited to damages arising out of bodily injury or death to persons and damage to property, caused by or resulting from:

1. Sole negligence of Contractor: The sole negligence of Contractor or any of its Subcontractors;
2. Concurrent negligence: The concurrent negligence of Contractor, or any Subcontractor, but only to the extent of the negligence of Contractor or such Subcontractor; and

B. Employee action and RCW Title 51: In any action against the indemnified parties by any employee of Contractor, its Sub-subcontractors, agents, or anyone directly or indirectly employed by any of them, the indemnification obligation of this section shall not be limited by a limit on the amount or type of damages, compensation, or benefits payable by or for Contractor or any Subcontractor under RCW Title 51, the Industrial Insurance Act, or any other employee benefit acts. In addition, Contractor waives immunity as to the indemnified parties only, in accordance with RCW Title 51.

Limited Waiver of Sovereign Immunity. This Permit does not waive, limit, or modify the sovereign immunity of Grantee from unconsented suit except as specifically provided in this section. Grantee provides the following irrevocable limited waiver of sovereign immunity from suit or legal process with respect to this Permit. Grantee consents to suit by State, acting through the Washington Department of Natural Resources, in the Superior Court of Washington State for Thurston County (including all courts of the State to which decisions of such court may be appealed) if, and only if the claims in the suit relate to the making, formation or validity of, or obligations under this Permit.

This limited consent to suit is applicable solely to claims by State, and not to claims by any other person, corporation, partnership, governmental body, or other entity whatsoever. This limited waiver of sovereign immunity does not extend to proceedings in any other forum or regarding any other matter.

This limited consent to suit only authorizes relief for any of the following: compelling Grantee to take action specifically required by this Permit, compelling Grantee to discontinue action expressly prohibited by this Permit, terminating this Permit for a material breach, and awarding compensatory money damages against Grantee for claims arising under this Permit.

Grantee hereby expressly and irrevocably waives any application of the exhaustion of tribal remedies or abstention doctrine and any other law, rule, regulation or interpretation that might otherwise require, as a matter of law or comity, that resolution of any of the matters to which this limited waiver of sovereign immunity applies be heard first in a tribal court or any other dispute resolution process of Grantee.

Grantee agrees to provide a copy of the Tribal Council's Resolution acknowledging its waiver of sovereign immunity within sixty (60) days of execution of this Permit.

Notice. Unless otherwise specified herein, any notices required or permitted under this Permit may be delivered personally, sent by facsimile machine or mailed certified, return receipt requested, to the following addresses or to such other place as the parties hereafter direct. Notice will be deemed given upon delivery or upon confirmation of facsimile, whichever is applicable.

To State:
DEPARTMENT OF NATURAL RESOURCES
Northwest Region
919 North Township Street
Sedro-Woolley, WA 98284

To Grantee:
LUMMI INDIAN BUSINESS
COUNCIL
2665 Kwina Road
Bellingham, WA 98226

Integrated Agreement; Modification. This Permit constitutes the entire agreement and understanding of the parties with respect to the subject matter of the Permit and supersedes all prior negotiations and representations. This Permit may not be modified except in writing signed by the parties. The parties agree to execute any additional documents reasonably necessary to effectuate the provisions and purposes of this Permit.

Severability. If any provision of this Permit is held to be invalid or unenforceable, this provision shall not affect or invalidate the remainder of this Permit, and to this end the provisions of this Permit are declared to be severable. If any such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Permit.

Waiver. Failure of either party to insist upon the strict performance of any of the terms and conditions of this Permit, or failure to exercise any rights or remedies provided in this Permit or by law, or to notify the other party in the event of breach, shall not release the other party of any of its obligations under this Permit, nor shall any purported oral modification or rescission of this Permit by either party operate as a waiver of any of the terms hereof. No waiver by either party of any breach, default, or violation of any term, warranty, representation, agreement, covenant, right, condition, or provision of this Permit shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, agreement, covenant, right, condition, or provision.

Assignment. This Permit, and any of the rights granted herein, shall not be assigned without prior written consent of State, except that said rights granted herein may be used by any Permittee, while engaged in the Grantee's operations.

Construction. The terms of this Permit shall be given their ordinary meaning unless defined herein and shall not be presumptively construed against either party.

Exhibits. All exhibits referred to in this Permit are deemed to be incorporated in this Permit in their entirety.

Headings. The headings in this Permit are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Permit nor the meaning of any of its provisions.

Counterparts. This Permit may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Permit at different times and places by the parties shall not affect its validity so long as all the parties execute a counterpart of this Permit.

IN WITNESS WHEREOF, the parties hereto have caused this Permit to be executed as below subscribed.

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
NORTHWEST REGION

Dated: July 28, 2016.



By: [Signature]
Title: Northwest Region Manager

Address: 919 North Township Street
Sedro-Woolley, WA 98284
Phone: (360) 856-3500

LUMMI INDIAN BUSINESS COUNCIL

Dated: July 28, 2016.

By: [Signature] G. TB II
Title: Treasurer

Address: 2665 Kwina Road
Bellingham, WA 98226
Phone: (360) 312-2315

Approved as to Form this
20th day of May, 2015.
By: Michael Rollinger
Assistant Attorney General
State of Washington

Exhibit A Permit Premises

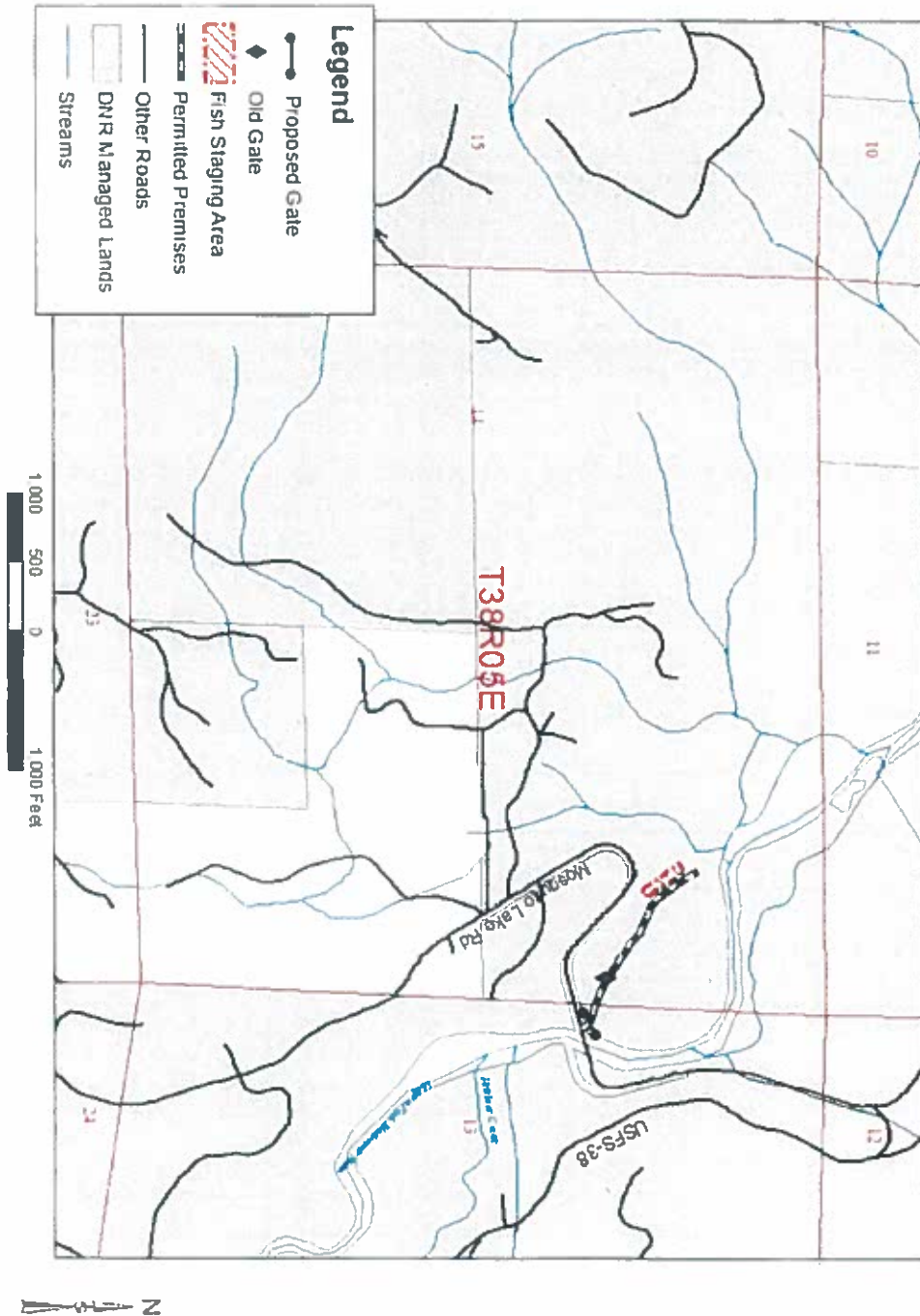


Exhibit B
HCP Requirements

- 1) Grantec shall immediately notify State of the following:
 - a) That Grantec has discovered locations of any species listed by the U.S. Department of Fish and Wildlife as threatened or endangered species (listed species) under the Endangered Species Act as such list may be updated from time to time; and
 - b) That Grantee has located any live, dead, injured, or sick specimens of any listed species.
- 2) Notification required in subsection 1) must in all circumstances occur as soon as practicable but in any event within 24 hours.
- 3) Grantee may be required to take certain actions to help State safeguard the well-being of any live, injured or sick specimen of any listed species until the proper disposition of such specimen can be determined by State.
- 4) Any application for a Forest Practices Permit submitted by Grantee for activities on the State Easement Area must identify that the State Easement Area is covered by the HCP.
- 5) To ensure that project construction does not adversely affect marbled murrelets or bald eagles during their respective periods of sensitivity, the timing restrictions (below) must be adhered to and apply to all use of heavy equipment.

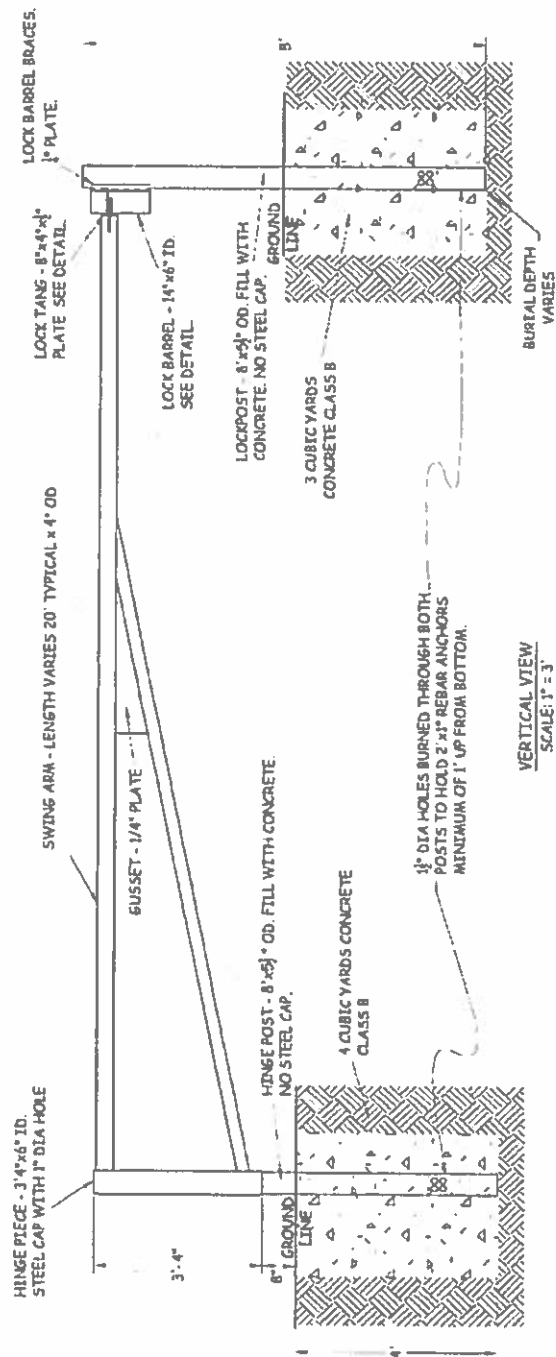
Marbled Murrelet Breeding Season Timing Restriction – April 1st through August 31st (1 hour before official sunrise to 2 hours after official sunrise AND from 1 hour before official sunset to 1 hour after official sunset).

Bald Eagle Communal Winter Roost Timing Restriction – October 15th to March 15th.

Exhibit C
Operational Requirements

- Hauling of forest products and heavy equipment is not allowed between November 1 and March 31, unless approved in writing by State.
- State and Grantee shall meet annually during the winter season to discuss Grantee's upcoming plans. Grantee shall contact State to schedule the meeting, which shall take place no later than February 28th of each year.
- Rock and gate installation shall be complete prior to Premises use.
- Rock application shall be 4-inch lift, using 3-inch-minus rock.
- Gate installation shall include a lockbox containing six levers, of which one lever shall be provided for State's lock.
- The old gate, as shown on Exhibit A, may remain in place and shall remain open.

STEEL GATE DESIGN



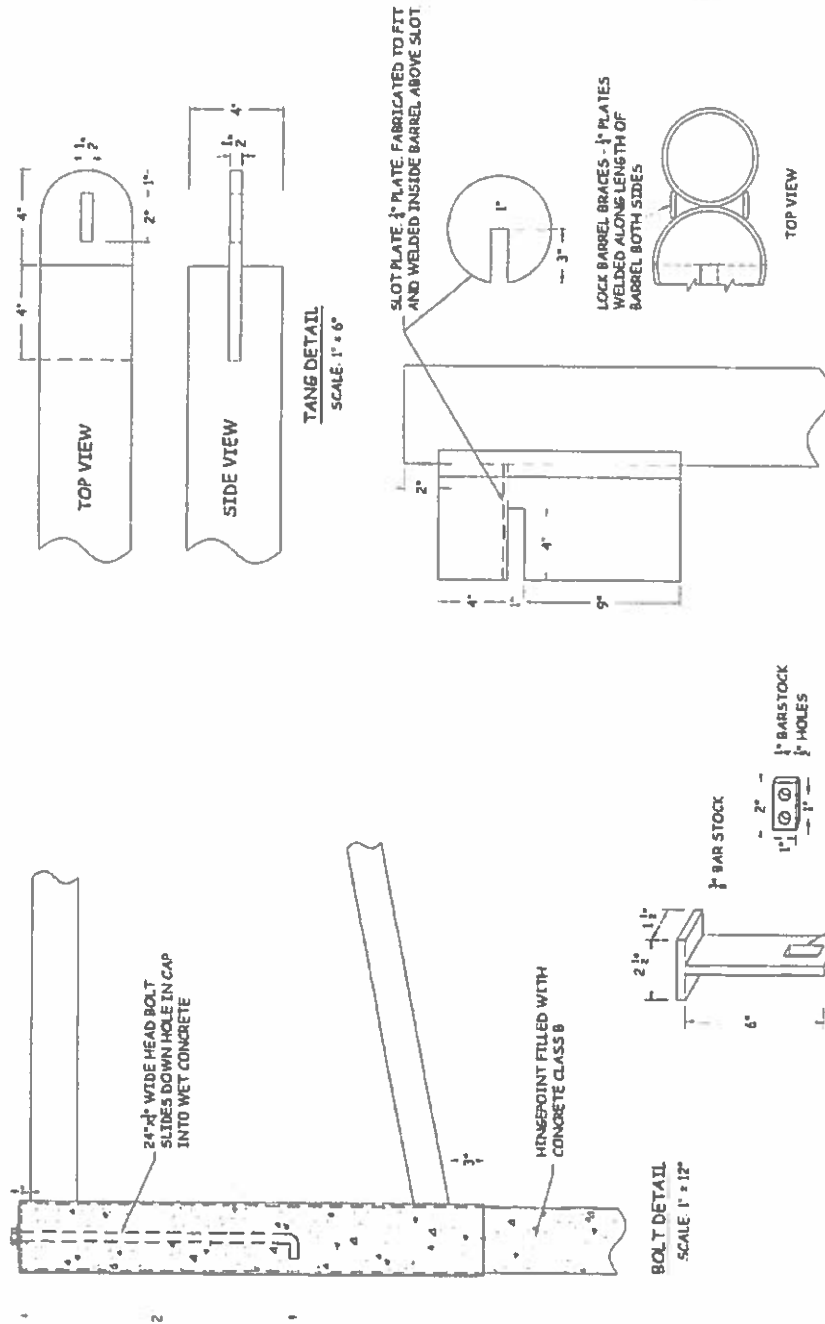
CONSTRUCTION NOTES

1. ALL STEEL PIPE PIECES HAVE 1/2" WALL THICKNESS

- CONSTRUCTION NOTES
1. ALL STEEL PIPE PIECES HAVE 1/2" WALL THICKNESS
 2. ALL WELDS ARE FILLET WELDS
 3. ACTUAL LOCATION SHALL BE DESIGNATED BY THE CONTRACT ADMINISTRATOR

CONTRACT #	PROJECT	SHEET
XXXX	TNAME	XX

STEEL GATE DESIGN



CONTRACT #	PROJECT	SHEET
XXXX	TSNAME	XX